

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

Harry Kay,

:

Plaintiff,

:

Civil Action No. 02-CV-3157

v.

:

Independence Blue Cross,

:

Defendant.

:

**RESPONSE OF DEFENDANT INDEPENDENCE BLUE CROSS TO  
PLAINTIFF'S OPPOSITION TO DEFENDANT'S BILL OF COSTS**

Defendant Independence Blue Cross, by its attorneys, hereby responds to Plaintiff's Opposition to Defendant's Bill of Costs in the above-captioned matter.

1. On May 16, 2003, the Court granted Defendant's Motion for Summary Judgment on all counts of Plaintiff's Complaint. A true and correct copy of the Court's Order is attached hereto as Exhibit A.

2. On May 27, 2003, Defendant filed its Bill of Costs pursuant to Fed. R. Civ. P. 54(d) and 28 U.S.C. § 1920, seeking a total of four thousand five hundred fifty-four dollars and eighty-nine cents (\$4,554.89) in costs, including three thousand four hundred eighty-two dollars and seventy-nine cents (\$3,482.79) for fees of the court reporter for transcripts necessarily obtained for use in this case, and one thousand seventy two dollars and ten cents (\$1,072.10) for printing fees. A true and correct copy of Defendant's Bill of Costs is attached hereto as Exhibit B.

3. On March 6, 2006, the Court sent a letter to Plaintiff's counsel, directing them to file any objections to Defendant's Bill of Costs with fourteen (14) days. A true and correct copy of the Court's letter is attached hereto as Exhibit C.

4. On March 21, 2006<sup>1</sup>, Plaintiff filed a letter with the Court objecting to Defendant's Bill of Costs. A true and correct copy of Plaintiff's letter is attached hereto as Exhibit D.

5. In opposition to Defendant's Bill of Costs, Plaintiff claims that the court reporter fees sought appear excessive and requests additional documentation substantiating same. (Id.) Attached hereto as Exhibit E are true and correct copies of the invoices for the court reporter for deposition transcripts which were used in Defendant's Motion for Summary Judgment, including:

Transcript from the 1/17/03 Deposition of Harry Kay	\$941.85
Transcript from the 1/31/03 Deposition of Harry Kay	\$812.50
Transcript from the Deposition of Ron Gilg	\$828.69
Transcript from the Deposition of Howard Gilpin	\$454.00
Transcript from the Deposition of Dennis Foley	\$132.00 <sup>2</sup>
<u>Transcript from the Deposition of Donna Bennett</u>	<u>\$310.75</u>
Total	\$3,479.79

6. Also in opposition to Defendant's Bill of Costs, Plaintiff claims that the printing fees sought appear excessive and requests additional documentation

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<sup>1</sup> Plaintiff's letter is dated March 20, 2006, but was not filed until March 21, 2006. Per the Court's March 6, 2006 letter, Plaintiff was to file any objections within 14 days, or by March 20, 2006. Thus, the filing was one day late.

<sup>2</sup> Defendant's Bill of Costs inadvertently reflected the cost of Mr. Foley's deposition transcript as \$135.00, when in fact it was \$132.00. For this reason, Defendant reduces the total amount of costs sought for deposition transcripts by \$3.00 to \$3,479.79 and the overall costs sought to \$4,551.89.

substantiating same. Attached hereto as Exhibit F are true and correct copies of records documenting the printing costs incurred by Defendant in conjunction with its Motion for Summary Judgment totaling \$1,072.10.

7. The costs sought by Defendant are well-documented, reasonable and within the scope of Fed. R. Civ. P. 54(d) and 28 U.S.C. § 1920.

For the foregoing reasons, Defendant Independence Blue Cross respectfully requests that the Court enter a judgment taxing costs upon Plaintiff as set forth in Defendant's Bill of Costs.

Respectfully submitted,

/s/ Pam R. Jenoff  
Steven R. Wall (#39012)  
Pam R. Jenoff (#87821)  
MORGAN LEWIS & BOCKIUS LLP  
1701 Market Street  
Philadelphia, PA 19103  
215.963.4928/5546

Attorneys for Defendant  
Independence Blue Cross

Date: April 3, 2006

## **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**HARRY KAY,** :  
Plaintiff, : **CIVIL ACTION**  
: :  
v. :  
: :  
**INDEPENDENCE BLUE CROSS,** : **No. 02-3157**  
Defendant. : :

**ORDER**

AND NOW, this day of May, 2003, upon consideration of Defendant Independence Blue Cross's Motion for Summary Judgment, Plaintiff Harry Kay's response thereto, Plaintiff's Addendum to its Memorandum of Law, and following oral argument, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant's Motion for Summary Judgment (Document No. 12) is **GRANTED**. Summary judgment is entered in favor Defendant Independence Blue Cross and against Plaintiff Harry Kay.
2. The Clerk of Court is directed to close this case for statistical purposes.

**BY THE COURT:**

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**Berle M. Schiller, J.**

## **EXHIBIT B**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HARRY KAY

v.

INDEPENDENCE BLUE CROSS

CIVIL ACTION NO.  
02-3157

**BILL OF COSTS**

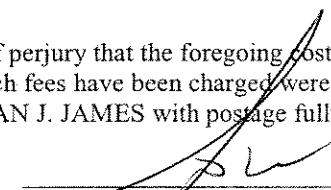
Judgment having been entered in the above action on the 16th day of MAY, 2003, against HARRY KAY, the clerk is requested to tax the following as costs:

Fees of the clerk	_____
Fees of the marshal	_____
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	\$3,482.79
Fees and disbursements for printing	\$1,072.10
Fees for witnesses (itemized on reverse side)	_____
Fees for exemplification and copies of papers necessarily obtained for use in case	_____
Docket fees under 28 U.S.C. 1923	_____
Costs incident to taking of depositions.	_____
Cost as shown on Mandate of Court of Appeals	_____
<i>Other Costs (Please itemize)</i>	_____
 Total	 \$4,554.89

**DECLARATION**

I certify under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to JONATHAN J. JAMES with postage fully prepaid thereon.

Signature of Attorney:

  
Steven R. Wall  
Counsel for Defendant

Dated:

  
5/25/03

Costs are hereby taxed in the amount of \$ \_\_\_\_\_ this \_\_\_\_\_ day of  
\_\_\_\_\_, 2003, and that amount included in the judgment.

\_\_\_\_\_  
Clerk

By \_\_\_\_\_  
\_\_\_\_\_  
Deputy Clerk

**NOTE: SEE REVERSE SIDE FOR AUTHORITIES ON TAXING COSTS.**

## Witness Fees (computation, cf. 28 U.S.C. 1821 for statutory fees)

Name and Residence	Attendance		Subsistence		Mileage		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
							<b>TOTAL</b>

**NOTICE****Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:**

“Sec. 1924. Verification of bill of costs.”

“Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.”

**See also Section 1920 of Title 28 which reads in part as follows:**

“A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree.”

**The Federal Rules of Civil Procedure contain the following provisions:****Rule 54(d)**

“Except when express provisions therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day’s notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.”

**Rule 6(e)**

“Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.”

**Rule 58 (In Part)**

“Entry of the judgment shall not be delayed for the taxing of costs.”

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA  
U.S. COURTHOUSE  
INDEPENDENCE MALL WEST  
601 MARKET STREET  
PHILADELPHIA, PA 19106-1797

MICHAEL E. KUNZ  
CLERK OF COURT

CLERK'S OFFICE  
ROOM 2609  
TELEPHONE  
215-597-9221

March 6, 2006

Arthur B. Jarrett, Esquire  
Jonathan J. James, Esquire  
James & Jarrett  
Stephen Girard Building, 9th Floor  
21 South 12th Street  
Philadelphia, PA 19107

RE: Kay v. Independence Blue Cross,  
Civil Action Number: 02-cv-3157

Dear Counselors:

This is in regard to the bill of costs filed on 5/27/2003 by Steven R. Wall, Esquire on behalf of the prevailing party in the above captioned case, Defendant, in the amount of \$4,554.89. You, or your firm, represented the non-prevailing party, Plaintiff in this case.

No objections to the bill of costs in the above captioned case have been filed by your office. Accordingly, unless within fourteen (14) days of the date of this letter written objections to the bill of costs are filed by you, with a copy of your objections furnished to opposing counsel, it shall be assumed that there are no objections to taxing costs as requested in favor of the prevailing party, and allowable costs as itemized under the governing statute, 28 U.S.C. § 1920, shall be taxed in favor of the prevailing party "as of course", pursuant to Rule 54(d)(1) of the Federal Rules of Civil Procedure.

Upon receipt of any written objections, opposing counsel will have an additional fourteen (14) days to file a response to your objections. Thereafter, a written taxation opinion, and, if appropriate, a judgment, will be entered in my office. Please send any objections to Michael E. Kunz, Clerk of Court, 601 Market Street, Room 2609, Philadelphia, PA 19106, Attn: Leesa B. Erickson.

Thank you for your time and attention to this matter.

Very truly yours,

  
Michael E. Kunz  
Clerk of Court

cc: Amelia Dealy Haverstick, Esquire  
Pam R. Jenoff, Esquire  
Steven . Wall, Esquire

## **EXHIBIT D**

J A M E S, J A R R E T T & S C H W A R T Z  
P R O F E S S I O N A L C O R P O R A T I O N

---

Stephen Girard Building • 21 South 12th Street • 9th Floor • Philadelphia • PA 19107 Tel (215)751-9865 Fax (215)751-0658  
email:wschirmacher@jjslawfirm.com

March 20, 2006

Mr. Michael Kunz  
United States District Court for the  
Eastern District of Pennsylvania  
601 Market Street  
United States Courthouse  
Philadelphia, PA 19106

Attn: Leesa B. Erickson

Re: Harry Kay v. Independence Blue Cross  
U.S.D.C. Civil Action No:02-3157

Dear Mr. Kunz:

Please accept this correspondence as an objection to Defendants' Bill of Costs in the above captioned matter.

As an initial matter, the \$1,072.10 corresponding to "Fees and disbursements for printing" appears excessive in light of the circumstances relating to this matter. Additionally, the "Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case" in the amount of \$3,482.79 appears similarly excessive.

Counsel for Plaintiff Harry Kay, therefore, requests additional documentation corresponding to and substantiating Defendants' Bill of Costs in the amount of \$4,554.89.

Respectfully,

JAMES, JARRETT & SCHWARTZ, P.C.

By:

  
Walter D. Schirrmacher, Esquire

WDS/klj

cc: Steven R. Wall, Esquire

## **EXHIBIT E**

## Invoice

**CHARLES P.  
CARMODY &  
ASSOCIATES**

---

**COURT REPORTING SERVICES**

*PO BOX 525 \* AMBLER, PA 19002 \**  
*(215)646-2599 (O) \* (215)542-8650 (F) \* DEPOSITION1@COMCAST.NET*  
*FED TAX ID NO. 23-3077255*

DATE	INVOICE #
1/24/2003	101611

## BILL TO

Amanda Dealy Haverstick, Esquire  
 MORGAN, LEWIS & BOCKIUS, LLP  
 1701 Market Street  
 Philadelphia, PA 19103

## TERMS

30 DAYS NET

Service Date	Item	Witness/Case	Amount
1/17/2003	Org. & 1 Copy	Original & 1 Copy. EXPEDITE. USDC, East. Dist. of Pa. No. 02-CV-3151 Kay v. Independence Blue Cross Deposition of HARRY KAY. Held at the law offices of Morgan, Lewis & Bockius, 1701 Market St., Phila., Pa. 190 total pages.	931.00
	App. Fee	Appearance Fee. NO CHARGE.	0.00
	Minuscript	Minuscript. NO CHARGE.	0.00
	Exhibits	31 Exhibit Copies	10.85
	S&H	Shipping & Handling. NO CHARGE.	0.00

Thank you for your loyal patronage. Fed. I.D. No. 23-3077255

<b>Total</b>	\$941.85
--------------	----------

5-20-2003 10:15PM

FROM CPC\*ASSOC 2155428650

P. 2

**CHARLES P.  
CARMODY &  
ASSOCIATES**

**COURT REPORTING SERVICES**

*PO BOX 525 \* AMBLER, PA 19002  
(215) 646-2599 (OFFICE) \* (215) 540-8719 (FAX)  
DEPOSITION 1 @ COMCAST.NET*

**Invoice**

DATE

INVOICE #

2/17/2003

101647

FED. TAX ID. NO. 23-3077255

**BILL TO**

Amanda Dealy Haverstick, Esquire  
MORGAN, LEWIS & BOCKIUS, LLP  
1701 Market Street  
Philadelphia, PA 19103

**TERMS**

30 DAYS NET

Service Date	Item	Witness/Case	Amount
1/31/2003	Org. & 1 Copy	Original & 1 Copy. RE: Harry Kay v. IBC. USDC, Eastern District. NO. 02-CV-3151. Continued deposition of HARRY KAY. Held at MLB., Phila., PA. 220 pages	715.00
	App. Fee	Attendance/Appearance Fee. NO CHARGE.	0.00
	Minuscript	Minuscript. NO CHARGE.	0.00
	ASCII Disk	ASCII Disk of Transcript Proceedings. NO CHARGE.	0.00
	E-Delivery	E-Mail ASCII Files. NO CHARGE.	0.00
	Exhibits	155 Exhibit Copies	77.50
	S&H	Shipping & Handling	20.00

Thank you for your loyal patronage. Fed. I.D. No. 23-3077255

**Total**

\$812.50

CAPITAL LEGAL SERVICES

INVOICE

1431 Lombard Street  
Philadelphia, PA 19146  
NEW (215) 732-0800  
Toll Free: (800) 760-2626

DATE	INVOICE NO.
3/11/2003	030603AH101

Bill To :	Case Caption :
Amanda D. Haverstick, Esquire Morgan, Lewis & Bockius, LLP 1701 Market Street Philadelphia, PA 19103-2921	Harry Kay vs. Independence Blue Cross

Date Taken	Terms	Payment Due
03/06/03	Due on receipt	3/11/2003

Item	Description	Number of Pages
Copy	Expedited/Deponent(s): Howard Gilpin, Jr.	101
ASCII Disc	ASCII Disc	1
Condensed	Condensed and Word Index	1
S & H	Shipping and Handling	1
Credit Cards	Visa _____ MasterCard _____ American Express _____ Card Holders Name _____ Card #: _____ Exp Date: _____ Signature: _____	
Federal Tax Identification No.: 72-1519320 1.5% finance charge on all balances over 30 days.		<b>Total</b> \$454.00



# Class Act Reporting Agency

Registered Professional Reporters

1420 Walnut Street, Suite 1212  
Philadelphia, PA 19103  
Phone: (215) 928 9760 Fax: (856) 235-2811

47 Michaelson Drive  
Mount Laurel, NJ 08054  
Phone: (856) 235-5108 Fax: (856) 235-2811

**Bill To:**  
Amanda D. Haverstick, Esquire  
Morgan Lewis Bockius  
1701 Market Street  
Philadelphia, PA 19103

# INVOICE

DATE: 03/10/2003  
INVOICE # ADH031003-1

**For:**  
Harry Kay v. Independence Blue Cross  
Oral Depositions of :  
Donna Bennett-113 pages  
Dennis Foley-48 pages  
Taken: February 13, 2003

**Held at:**  
Offices of James, Jarrett & Schwartz  
21 South 12th Street, 9th Floor  
Philadelphia, Pennsylvania

DESCRIPTION	PAGES	RATE P/P	AMOUNT
ONE COPY + MINUSCRIPT & ASCII (each deponent)	161	\$2.75	\$442.75
Appearance Fee			\$ -
Copying of Exhibits			\$ -
Delivery Charge			\$3.00

SUBTOTAL	\$445.75
TAX RATE	
SALES TAX	-
OTHER	-
<b>TOTAL</b>	<b>\$ 445.75</b>

Make all checks payable to CLASS ACT REPORTING AGENCY

FEDERAL TAX ID#: 22-3167931

Total due in 15 days. Overdue accounts subject to a service charge of 1% per month.

**PLEASE REMIT TO NJ OFFICE: 47 Michaelson Drive, Mt. Laurel, NJ 08054**

JD

Bennett +3.00  
113 pps @  
\$2.75 p/p =  
310.75  
Foley 48 pps @  
2.75 132.00

**CAPITAL LEGAL SERVICES**

1431 Lombard Street  
 Philadelphia, PA 19146  
 (800) 760-2626 toll free  
 (215) 732-4888 fax

**INVOICE**

DATE	INVOICE NO.
3/31/2003	031203AH212

Amanda D. Haverstick, Esquire  
 Morgan, Lewis & Bockius, LLP  
 1701 Market Street  
 Philadelphia, PA 19103-2921

## Case Information

Harry Kay vs. Independence Blue Cross

Date Taken	Terms	Payment Due
03/12/03	Due on receipt	3/31/2003

Item	Description	QUANTITY
Copy	Expedited/Deponent(s): Ronald Gilg	193
Exhibits	Exhibits Photocopied and Annexed	89
Condensed	Condensed and Word Index	1
ASCII Disc	ASCII Disc	1
S & H	Shipping and Handling	1
Credit Cards	Visa _____ MasterCard _____ American Express _____ Card Holders Name _____ Card #: _____ Exp Date: _____ Signature: _____	
Transcript	Transcript sent without invoice	2
Federal Tax Identification No.: 72-1519320 1.5% finance charge on all balances over 30 days.		<b>Total</b> \$828.69

## **EXHIBIT F**

MATTER 002157-1917  
Expenses 03/01/03 - 05/20/03

Date Worked	Invoice	Description	Quantity	Amount
3/3/2003	533294	Duplicating Usage 5 Copies	5	0.50
3/3/2003	533294	Duplicating Usage 40 Copies	40	4.00
3/3/2003	533294	Duplicating Usage 15 Copies	15	1.50
3/4/2003	533294	Duplicating Usage 501 Copies	501	50.10
3/5/2003	533294	Duplicating Usage 171 Copies	171	17.10
3/5/2003	533294	Duplicating Usage 18 Copies	18	1.80
3/6/2003	533294	Duplicating Usage 13 Copies	13	1.30
3/7/2003	533294	Duplicating Usage 27 Copies	27	2.70
3/7/2003	533294	Duplicating Usage 7 Copies	7	0.70
3/7/2003	533294	Duplicating Usage 129 Copies	129	12.90
3/10/2003	533294	Duplicating Usage 543 Copies	543	54.30
3/11/2003	533294	Duplicating Usage 232 Copies	232	23.20
3/11/2003	533294	Duplicating Usage 4 Copies	4	0.40
3/11/2003	533294	Duplicating Usage 102 Copies	102	10.20
3/11/2003	533294	Duplicating Usage 11 Copies	11	1.10
3/12/2003	533294	Duplicating Usage 11 Copies	11	1.10
3/12/2003	533294	Duplicating Usage 10 Copies	10	1.00
3/14/2003	533294	Duplicating Usage 22 Copies	22	2.20
3/17/2003	533294	Duplicating Usage 93 Copies	93	9.30
3/17/2003	533294	Duplicating Usage 40 Copies	40	4.00
3/24/2003	533294	Duplicating Usage 552 Copies	552	55.20
3/25/2003	533294	Duplicating Usage 138 Copies	138	13.80
3/25/2003	533294	Duplicating Usage 150 Copies	150	15.00
3/25/2003	533294	Duplicating Usage 1 Copy	1	0.10
3/26/2003	533294	Duplicating Usage 42 Copies	42	4.20
3/26/2003	533294	Duplicating Usage 2 Copies	2	0.20
3/26/2003	533294	Duplicating Usage 37 Copies	37	3.70
3/27/2003	533294	Duplicating Usage 14 Copies	14	1.40
3/27/2003	533294	Duplicating Usage 1 Copy	1	0.10
3/28/2003	533294	Duplicating Usage 140 Copies	140	14.00
3/28/2003	533294	Duplicating Usage 12 Copies	12	1.20
3/31/2003	533294	Duplicating Usage 1410 Copies	1410	141.00
3/31/2003	533294	Duplicating Usage 72 Copies	72	7.20
3/31/2003	533294	Duplicating Usage 396 Copies	396	39.60
3/31/2003	533294	Duplicating Usage 353 Copies	353	35.30
4/1/2003	545201	Duplicating Usage 1293 Copies	1293	129.30
4/3/2003	545201	Duplicating Usage 184 Copies	184	18.40
4/15/2003	545201	Duplicating Usage 875 Copies	875	87.50
4/16/2003	545201	Duplicating Usage 185 Copies	185	18.50
4/16/2003	545201	Duplicating Usage 423 Copies	423	42.30
4/18/2003	545201	Duplicating Usage 169 Copies	169	16.90
4/18/2003	545201	Duplicating Usage 216 Copies	216	21.60
4/22/2003	545201	Duplicating Usage 37 Copies	37	3.70
4/23/2003	545201	Duplicating Usage 1429 Copies	1429	142.90
4/23/2003	545201	Duplicating Usage 337 Copies	337	33.70
4/25/2003	545201	Duplicating Usage 13 Copies	13	1.30
4/28/2003	545201	Duplicating Usage 184 Copies	184	18.40
4/30/2003	545201	Duplicating Usage 18 Copies	18	1.80
5/7/2003	552362	Duplicating Usage 8 Copies	8	0.80
5/8/2003	552362	Duplicating Usage 36 Copies	36	3.60
			TOTAL:	\$1,072.10

**CERTIFICATE OF SERVICE**

I, Pam R. Jenoff, hereby certify that the Response of Defendant Independence Blue Cross to Plaintiff's Opposition to Defendant's Bill of Costs was hand-delivered on April 3, 2006 to:

Jonathan J. James, Esq.  
James & Jarrett, P.C.  
Stephen Girard Building, 9th Floor  
21 South 12th Street  
Philadelphia, PA 19107

/s/ Pam R. Jenoff  
Pam R. Jenoff